

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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March 6, 2019

The Honorable Wilbur L. Ross, Jr.
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Secretary:

I have reviewed the letter that your Assistant Secretary for Legislative and Intergovernmental Affairs sent yesterday seeking to postpone your long-planned testimony before the Committee on March 14, 2019.¹ After carefully considering this request, I am writing to inform you that the Committee's hearing will remain on March 14, and the Committee expects you to testify as agreed. However, the Committee is willing to make several accommodations to address the concerns set forth in the letter yesterday, and they are detailed below.

The Committee invited you to testify on January 8, 2019—more than nine weeks ago—and you have had more than enough time to prepare.² In addition, your staff confirmed repeatedly over the past two months that you would appear voluntarily:

- On January 11, 2019, your Assistant Secretary for Legislative and Intergovernmental Affairs responded to the Committee's invitation by writing that, although you were unavailable for the entire month of February, you were "available to appear before the Committee on March 14, 2019 or March 28, 2019."³

¹ Letter from Michael Platt Jr., Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Mar. 5, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.03.05%20Letter%20to%20Chairman%20Cummings_0.pdf).

² Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Ross-DOC%20re%20Citizenship%20Question.pdf>).

³ Letter from Michael Platt Jr., Assistant Secretary for Legislative and Intergovernmental Affairs, Department of Commerce, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Jan. 11, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.01.11%20Response%20to%20Chairman>

- On January 18, 2019, Committee staff emailed your staff, writing: "We will proceed with the March 14th date for the hearing with Secretary Ross." Your staff confirmed receipt.
- On January 23, 2019, your staff confirmed during a telephone call with Committee staff that you were comfortable with the March 14 hearing date and that no further discussion was necessary.
- On February 1, 2019, your staff confirmed again to Committee staff that you would appear at the March 14 hearing.
- On February 7, 2019, the Committee sent a letter thanking you for agreeing to testify at the hearing, which would "examine the ongoing preparations for the 2020 Decennial Census, the addition of a citizenship question, and other topics."⁴
- On February 22, 2019, your staff confirmed yet again during a telephone call with Committee staff that you would appear before the Committee voluntarily on March 14.

In the letter yesterday, your Assistant Secretary stated that you would not be prepared to testify about topics unrelated to the Census. Specifically, he wrote that you would not be ready to answer questions relating to two letters the Committee sent to you last month: the first was sent on February 8, 2019, requesting information relating to your financial disclosure filings; and the second was sent on February 19, 2019, seeking information about efforts by the Trump Administration to transfer sensitive nuclear technology to Saudi Arabia.⁵

In order to accommodate these concerns, the scope of the Committee's March 14 hearing will not include questions relating to the transfer of nuclear technology to Saudi Arabia. In addition, if you believe you are not prepared to answer questions relating to your own financial disclosures, the Committee will allow you to provide responsive information for the record, and I will make a statement to this effect at the hearing.

In his letter yesterday, your Assistant Secretary also expressed concern that the

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⁴ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Feb. 7, 2019) (emphasis added) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-07%20EEC%20to%20Ross%20re%20Thanking%20for%20Agreeing%20to%20Testify.pdf>).

⁵ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Feb. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-08.EEC%20to%20Ross%20re%20Conflicts%20of%20Interest.pdf>); Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Feb. 19, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-02-19.EEC%20to%20Ross-DOC%20re%20IP3.pdf>).

Committee is insisting on full compliance with our document requests. This should not come as a surprise to anyone. However, as an additional accommodation, the Committee will agree to receive document productions relating to both your financial disclosures and the transfer of nuclear technology to Saudi Arabia after the March 14 hearing.

To further accommodate your concern, the Committee will narrow the documents that must be produced before the March 14 hearing to a specific set of priority documents that are key to our understanding of the communications around the addition of the citizenship question. These priority documents were sought in Request 3 of the Committee's January 8, 2019, letter. For your reference, that request asked you to produce the following documents, which the Committee must receive in unredacted form:

All communications between or among officials from the Department of Commerce, the Census Bureau, and any other office or entity inside or outside of the government regarding the addition of a citizenship question.⁶

Please note that the existence of separate civil litigation is not a valid basis to withhold these documents from the Committee. As the Supreme Court has stated:

But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.⁷

I trust that these multiple accommodations and clarifications address the concerns set forth in the letter from your Assistant Secretary. Please confirm by 5 p.m. tomorrow, Thursday, March 7, 2019, whether you will appear voluntarily on March 14, as previously agreed, and whether you intend to produce the priority documents in unredacted form.

If you do not accept this offer, the Committee may need to consider alternative means to obtain your testimony.

⁶ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Secretary Wilbur L. Ross, Jr., Department of Commerce (Jan. 8, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-01-08.EEC%20to%20Ross-DOC%20re%20Citizenship%20Question.pdf>).

⁷ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962).

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If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink, reading "Elijah E. Cummings". The signature is stylized with a large "E" and a long, sweeping underline.

Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member